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No. 856

In the

Supreme Court of the United States

November Term, A.D., 1966

JACOB J. GORDON,

Petitioner

vs.

CITY OF WORCESTER et al.,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Worcester, Mass.
PL 5-0584

MORSE PRESS INC., Worcester, Mass.

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Whether a title holder of realty in fee simple, or those holding under him can be deprived of title and possession by continuous and repetitive decisions which have no basis in fact or law, and where such decisions are a gross violation of this petitioners Constitutional Rights, and where such decisions clearly violate all established legal doctrine.

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To The: Honorable Chief Justice and Associate Justices of The Supreme Court of The United States:

Petitioner, Jacob J. Gordon, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit which affirmed the judgment of the District Court wherein petitioner has sought to obtain title and possession of land.

OPINION BELOW

The opinion rendered in the United States District Court for the District of Massachusetts in the form of a Memorandum is printed in the Appendix hereto, the United States Court of Appeals rendered no opinion in its judgment dated September 15, 1966 affirming the order of the District Court.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals for the First Circuit was entered on September 15, 1966. The jurisdiction of this Court is invoked under Title 28, U.S.C., Section 1331.

QUESTION PRESENTED

Whether a title holder of realty in fee simple, or those holding under him can be deprived of title and possession by continuous and repetitive decisions which have no basis in fact or law, and where such decisions are a gross violation of this petitioners Constitutional Rights, and where such decisions clearly violate all established legal doctrine.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides:

> "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment to the Constitution of the United States provides:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Clarence R. Streeter owned land in fee simple in Worcester, Massachusetts.

The City of Worcester assessed the land in the name of a corporation that neither owned or had an interest in the land.

The City of Worcester alleged $68.00 as being owed it by the non owner corporation.

The City of Worcester made a tax taking of the locus alleging a sum of $68.00 as being owed it by the non owner corporation.

The City of Worcester executed and recorded a tax deed which named as grantor a corporation which neither owned or had an interest in the land.

The Land Court proceedings at their inception never mentioned the name of the true owner.

The Land Court proceedings in its final findings never mentioned the name of the true owner.

On November 16, 1961 the City of Worcester sold the land; for the sum of $116,000.00.

On September 23, 1957, the Massachusetts Supreme Judicial Court 336 Mass. 469 IN Streeter vs. the City of Worcester said "and if the assessment is not levied on the person who is either the owner or in possession, the tax is void." citing as authority for this statement J. L. Hammet Co. vs. Alfred Peats Co. 217 Mass. 520, 522 Desmond vs. Babbitt, 117 Mass. 233, and Irving Usen Co. Inc. vs. Assessors of Boston 309 Mass. 544.

Mass. Statute Chapter 59, Section 75 states in effect and substance "that no taxes are chargeable or owed by the owner of real estate in the event an assessment is not made in the name of the owner

before Dec. 21, of the year in which said taxes are due.

Mass. Statute Chapter 60 Section 64 states in substance and effect "that the jurisdiction of the Land Court is its power to foreclose the right of redemption from titles conveyed by a tax collectors deed."

REASONS FOR GRANTING THE WRIT

It is equally true, and without question, that the City of Worcester, and the Courts of Massachusetts were equal partners in a fraudulent undertaking.

It is without question also true, that if the decisions are left to stand in this case "NO MAN'S LAND IN MASSACHUSETTS IS NOW SAFE FROM ILLEGAL CONFISCATION.

The position of this court as regards notice is well spelled out in Marx vs. Hanthorn, Supreme Court Reporter Volume 13, Page 508, and the Doctrine of this Court is equally well known in Elliot vs. Piersoll 26 U.S. (1 Pet.) 328 7 L. Ed 164 (1828). Both cases have striking application to this petition.

CONCLUSION

It is therefore respectfully prayed that this Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit be granted.

Respectfully submitted,

Jacob J. Gordon, Pro Se
8 Creswell Road
Worcester, Massachusetts
PL 5-0584

APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Jacob J. Gordon
Plaintiff

v.

Civil Action
No. 66-13-S

City of Worcester and
Concord Street Trust,
Defendants

MEMORANDUM
March 30, 1966

Sweeney, D. J. In this action the plaintiff seeks to establish title to certain land in Worcester, Massachusetts. The only allegation of jurisdiction is that the action "is brought because of the violation of the Plaintiff's (sic) Constitutional rights, according to the provisions of the 14th amendment. . . ." But nowhere in the fairly lengthy complaint are there any facts alleged which could conceivably support that general allegation. This case clearly PRESENTS ONE OF THE EXCEPTIONS TO THE PRINCIPLE OF BELL v. HOOD, 327 U.S. 678 (1946), and I rule that the alleged constitutional claim is so wholly insubstantial that this court is without jurisdiction. See Mannelli v. Providence Journal Company, 312 F. 2d 3 (1st Cir. 1962). The complaint may be dismissed for lack of jurisdiction.

/s/ Alice R. Fitzgerald
By the Court
Deputy Clerk

/s/ George C. Sweeney
United States District Judge
April 4, 1966

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CITY OF WORCESTER ET AL.,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

HARRY J. MELESKI
City Solicitor for the Respondent, City of Worcester
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

The Proceedings Below

This is an action to establish title to certain land in Worcester brought in the United States District Court for the District of Massachusetts by the petitioner, hereinafter called "Gordon" (R. 3, 4.). The respondent, City of Worcester, hereinafter called "Worcester", moved to dismiss Gordon's complaint on the ground that it failed to state a claim against Worcester upon which relief could

be granted (R. 46-47.). The respondent, Concord Street Trust, hereinafter called "Concord Street" moved to dismiss the complaint on the grounds that 1) the court lacked jurisdiction over the subject matter and that 2) the complaint failed to state a claim against Concord Street upon which relief could be granted (R. 48.). Both motions came before Sweeney, D. J. (R. 1.), who duly dismissed the complaint for lack of jurisdiction (R. 2, 56-57; 59.). On appeal below, the order of the District Court dismissing the complaint was affirmed.

Gordon now seeks a review of this determination.

Facts

The general allegation of jurisdiction contained in Gordon's complaint is that his action was brought because of the violation of Gordon's Constitutional rights under the Fourteenth Amendment (R. 3.).[1] In the numbered paragraphs of his complaint which follow this allegation of jurisdiction and which are material to the issue presented by this petition, Gordon alleged in substance that one Streeter acquired title to the land involved in 1924 (R. 4.); that thereafter, Worcester improperly assessed the said land in the name of a corporation, Streeter and Sons Co. (R. 4-5.); that Worcester, nevertheless, took a tax title to the said land from the said corporation for nonpayment of taxes and by an amended petition in the Land Court of Massachusetts foreclosed the said Streeter's right of redemption in the said land in 1937 (R. 5-6, 28-29.); that in 1955, the said Streeter undertook to assert his title in the said land by an equitable action in the said Land Court

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[1] That the matter in controversy exceeded the sum or value of $10,000. was not expressly alleged. But see paragraphs 21 and 23 of the complaint from which one could possibly infer the allegation of this jurisdictional requirement (R. 8-9.).

(R. 6, 30.); that the said action was concluded adversely to the said Streeter, both in the Land Court and upon appeal to the Supreme Judicial Court of Massachusetts in 1957 (R. 6-7, 30-31.);[2] that a certain mortgagee sought to establish his rights in the said land by a bill filed in the said Supreme Judicial Court in 1959, and which was, thereafter, referred to the said Land Court for determination (R. 8, 21.); that this said bill was concluded adversely to the said mortgagee (R. 8.); that in 1961, Worcester sold the land at public auction (R. 8-9.);[3] that Concord Street subsequently purchased the mortgage of the said mortgagee; that in 1965, the said Streeter conveyed whatever rights he may have had in the said land to Gordon by quitclaim deed (R. 9, 40-42.); that, thereafter, Gordon brought an action of contract against Worcester in the Worcester Superior Court wherein he alleged, among other things, that he held title to the said land (R. 9, 42.); and that this suit was concluded adversely to Gordon on demurrer by Worcester (R. 10, 46.). Nowhere in his complaint does Gordon allege that he was improperly prevented by Massachusetts procedure from either amending his declaration in the said Superior Court action or taking an appeal from the said ruling sustaining Worcester's demurrer.

Question Presented

Did the trial judge correctly dismiss the petitioner's complaint for lack of jurisdiction where the general aver-

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[2] See, *Streeter* v. *Worcester*, 336 Mass. 469 for a concise statement of facts concerning Streeter's involvement with the said land and his subsequent loss of rights in such.

[3] While the complaint herein fails to allege such, it is a fact that one Ross purchased the said land at the said auction and that he, in turn, conveyed it to Concord Street.

ment of federal jurisdiction was not borne out by the allegations which followed?

Reasons for Denying the Writ

The question is neither novel or weighty. It is well settled that the general allegation of a federal question contained in a complaint must be borne out by the claim, well pleaded, which follows.[4] If the general allegation of federal jurisdiction is so found to be wholly insubstantial, the Court may properly dismiss for lack of jurisdiction.

See: *Bell* v. *Hood*, 327 U.S. 678, 682-683 (So stated.).

T. B. Harms Company v. *Eliseu*, 339 F.2d 823, 828 (2nd Cir. 1964), cert. denied, 381 U.S. 915 (In context of copyright act, a general allegation that case arose under the said act was insufficient where no allegation of infringement followed.).

Mainelli v. *Providence Journal Company*, 312 F.2d 3, 5-6 (1st Cir. 1962) Court noted that proper course is to dismiss for lack of jurisdiction where federal claim is wholly insubstantial.).

An examination of Gordon's complaint reveals that he has failed to allege a single fact which would support his general allegation of a Fourteenth Amendment violation. From this complaint, one may infer that Gordon received all the procedural benefits which Massachusetts affords to

[4] See 2 Moore's Federal Practice (2d Ed.) sec. 8.09(1), where rule is stated and discussed; see also *Kabath* v. *O'Connor*, 234 F. Supp. 917, 920 (E.D.N.Y. 1964) and authorities cited (Rule stated and applied.); *accord*, *McNutt* v. *General Motors Acceptance Corp.*, 298 U.S. 178, 189-190 (Jurisdictional facts must be alleged and proved where defendants puts such in issue in his answer.).

litigants similarly situated. Thus, it was proper for the trial court below to dismiss the complaint for lack of jurisdiction. The federal claim was wholly insubstantial.

It is clear that this petition presents no important question concerning the administration of law. Instead, it presents only an exercise in the application of settled law to a rather lengthy and argumentative complaint (R. 3-46.).

Conclusion

For the reasons set forth above, it is respectfully urged that this petition for writ of certiorari be denied.

Respectfully submitted,

HARRY J. MELESKI
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City of Worcester
JOHN H. GOEWEY
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